IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

HANSEN BANNER, LLC, a Delaware Limited Liability Corporation,	)	
Plaintiff,	)	
v.	)	**Case No. ___________________**
MILESTONE UTILITY SERVICES, INC. a Florida Corporation	)	
Defendant.	)	

COMPLAINT

Plaintiff Hansen Banner, LLC ("Hansen" or "Plaintiff") files this Complaint against Defendant Milestone Utility Services, Inc. ("Milestone" or "Defendant"), and complains and alleges as follows:

PARTIES

1. Hansen is a Delaware corporation with its principal place of business in Atlanta, Georgia.

2. Milestone is a Florida corporation with its principal place of business in Plantation, Florida.

JURISDICTION AND VENUE

3. The Court has federal question jurisdiction under 28 U.S.C. § 1331, inasmuch as the claims alleged herein arise under federal laws, statutes, and regulations. Jurisdiction is also proper under 28 U.S.C. § 1338 as this civil action arises under an Act of Congress relating to patents, copyrights, and trademarks. The Court has supplemental jurisdiction over any state law claims arising hereunder pursuant to 28 U.S.C. § 1367.

4. The Court has personal jurisdiction over Defendant pursuant to the Missouri Long Arm Statute and consistent with the principles of due process. Milestone has conducted and does conduct business within the State of Missouri and within this judicial district.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

Hansen's Copyrights and Trade Secrets

6. Hansen is a successor in interest to various entities and is the party that maintains the right to pursue the copyright, trade secret and contractual claims that are at issue in this complaint. The term "Hansen," as used in this complaint, at times, includes or refers to entities that are predecessors in interest to Hansen Banner, LLC.

7. Hansen is a customer care and billing solutions provider that develops, implements and supports proprietary software within the energy and telecommunications industries.

8. Hansen invests significant resources in the development and improvement of its products and owns a robust intellectual property portfolio including registered copyrights.

9. Hansen owns federal copyright registration number TX 6-598-482 and all subsequent versions and iterations of TX 6-598-482 for Indus Customer Suite 4.01 (the "Indus Copyright").

10. Hansen owns federal copyright registration number TXu 565-283 and all subsequent versions and iterations of TXu 565-283 for the Banner CIS system (the "Banner CIS Copyright"). The Indus Copyright and the Banner CIS Copyright shall be referred to in the collective as the "Hansen Copyrights".

11. The Hansen Copyrights contain software including valuable and proprietary source code and data models used for customer care and billing applications in the power and utilities industry now marketed under the name “Banner CIS”.

12. The source code and database model associated with the Hansen Copyrights also constitute proprietary and confidential information and are trade secrets.

13. Hansen expended significant time and funds developing the source code and database models associated with the Hansen Copyrights.

14. Hansen took significant steps to maintain the secrecy and confidentiality of the source code and database models associated with the Hansen Copyrights.

15. The source code and database models associated with the Hansen Copyrights are not publicly available and are not provided to third parties without an obligation of confidentiality.

16. The source code and database models associated with the Hansen Copyrights are provided to customers and vendors when necessary. However, Hansen, in order to preserve the confidential nature of its source code and database model, entered into Software License Agreements with its customers and licensees of its software with strict confidentiality provisions in order to protect against the disclosure or use of confidential and proprietary information, including the source code and database models associated with the Hansen Copyrights.

17. Hansen’s various Software License Agreements required customers and licensees of Hansen to protect against the disclosure of Hansen’s trade secrets, including the source code and database models associated with the Hansen Copyrights.

18. Pursuant to the Software License Agreements, to the extent information relating to Hansen’s confidential and proprietary information, including the information and trade secrets

associated with the Hansen Copyrights, were allowed to be disclosed to third-parties, the licensees were required to enter into non-disclosure agreements that were required to be no less restrictive than the Software License Agreements.

19. On information and belief, certain Hansen customers and licensees have, in an effort to facilitate Milestone's software support and maintenance services, provided Milestone with access to Hansen's confidential and proprietary information, including its information and trade secrets associated with the Hansen Copyrights.

20. In such circumstances Milestone was required to enter into a non-disclosure agreement or non-disclosure agreements with certain Hansen customers in which Milestone agreed to certain restrictions in exchange for access to Hansen's confidential information and trade secrets.

Formation of Milestone by Former Employees

21. Prior to 2004, Hansen's predecessor in interest employed three individuals: (1) Ram Kasarla, (2) Edith Mercado, and (3) Frank Anderson (the "Milestone Founders").

22. While employed at Hansen, the Milestone Founders were intimately involved in the development and implementation of important and valuable software owned by Hansen.

23. By virtue of their prior employment at Hansen, the Milestone Founders obtained an understanding of Hansen's business plan and became aware of the identities of Hansen's customers.

24. By virtue of their prior employment at Hansen, the Milestone Founders were also aware of Hansen's copyright portfolio, including the Hansen Copyrights.

25. In 2004, the Milestone Founders separated from Hansen and formed Milestone.

26. Since the Milestone Founders' separation from Hansen, Milestone has provided software support services for Hansen's customers, including its licensee OneGas (formerly ONEOK, Inc. ("ONEOK")).

Milestone's ePortal Application

27. In 2015, the City of Kansas City, a customer and licensee of Hansen's Banner CIS product, informed Hansen that it was planning on installing Milestone's ePortal product.

28. In June, 2017, The City of Kansas City informed Hansen that it was having issues with Banner CIS and that the issues needed to be addressed before an upgrade project to Banner CIS would be considered.

29. Hansen performed a systems analysis in order to determine the root cause of the issues reported by the City of Kansas City.

30. Hansen's system analysis revealed that in addition to allowing a customer payment arrangement application via the Banner CIS application, the system was also allowing customers to set up payment arrangements through Milestone's ePortal application.

31. Hansen suspected that the data issues experienced by the City of Kansas City were caused by Milestone's ePortal application.

32. In an effort to confirm the source of the problems experienced by the City of Kansas City, Hansen reviewed information stored in the City of Kansas City's Oracle database.

33. Hansen reviewed a detailed report generated by Oracle called an AWR Report. The AWR report revealed that the SQL (standard query language) source code affiliated with Milestone's ePortal application was a match to Hansen's 4.0.2 release of the Banner CIS Copyright.

34. On information and belief, Milestone had obtained access to Hansen's confidential and proprietary information, including the source code and database models associated with the Banner CIS Copyright and specifically that associated with Hansen's 4.0.2 release of the Banner CIS Copyright.

35. An analysis of the AWR report confirmed that Milestone's ePortal application employed certain techniques that were previously a part of the Banner CIS Copyright in the 4.0.2 release that had been subsequently discontinued or edited by Hansen in subsequent versions.

36. Hansen's 4.0.2 release of the Banner CIS application was never applied to the City of Kansas City as it migrated directly from version 3.0 to 4.3.

37. On information and belief, the installed 4.0.2 version was incompatible with the version installed for Kansas City and was responsible for the data issues originating from its improper copying and use of Hansen's base source code from the 4.0.2 release.

38. On information and belief, Milestone's ePortal application includes source code that appears to be virtually identical to the code in the 4.0.2 release. Accordingly, on information and belief, Milestone had copied Hansen's base source code of the Hansen Copyrights and implemented that copy in its ePortal application.

39. On information and belief, Milestone received Hansen's base source code for the 4.0.2 release of the Banner CIS from another Hansen customer only after agreeing to strict confidentiality and non-disclosure terms.

Milestone's eCSR Application

40. In 2017, Milestone announced its eCSR application.

41. Milestone's eCSR application provides customer service representatives a user interface to perform business transactions in their customer care and billing application.

42. Milestone markets its eCSR application as a "front-end wrapper application to help utility teams extend the life of their CIS and reduce customer care handle times."

43. Certain characteristics of Milestone's eCSR application suggest that the same code that is being used by Milestone in its ePortal application is also being used in its eCSR application and that the application is connected to a Banner database.

44. Upon information and belief, Milestone has made and continues to make unauthorized copies of the base source code associated with the Hansen Copyrights in connection with Milestone's eCSR application.

FIRST CAUSE OF ACTION
(Copyright Infringement – 17 U.S.C. § 101 *et seq.*)

45. Hansen realleges all foregoing paragraphs of this Complaint as if fully set forth herein.

46. Hansen owns the Hansen Copyrights.

47. Milestone's ePortal application and eCSR application infringe upon the Hansen Copyrights and Milestone infringes Hansen's exclusive rights under copyright by reproducing and distributing the ePortal application and eCSR application or the code contained within them.

48. Milestone's infringement of the Hansen Copyrights was willful as evidenced by the Milestone Founders prior employment with Hansen, their knowledge of Hansen's clientele and copyright portfolio, and subsequent copying and use of the Hansen Copyrights, and the non-disclosure agreements Milestone entered into.

49. By this unlawful copying, use, and distribution, Milestone has violated Hansen's exclusive rights under 17 U.S.C. § 106.

50. Milestone has realized unjust profits, gains and advantages as a proximate result of its infringement.

51. Milestone will continue to realize unjust profits, gains and advantages as a proximate result of its infringement as long as such infringement is permitted to continue.

52. Hansen is entitled to an injunction restraining Milestone from engaging in any further acts in violation of the United States copyright laws. Unless Milestone is prohibited from infringing upon the Hansen Copyrights and unless all infringing products and advertising materials are seized, Milestone will continue to intentionally infringe and induce infringement of Hansen's registered copyrights.

53. As a direct and proximate result of Milestone's direct and indirect willful copyright infringement, Hansen has suffered, and will continue to suffer, monetary loss to its business, reputation, and goodwill. Hansen is entitled to recover from Milestone, in amounts to be proven at trial, the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by Milestone as a result of Milestone's acts of infringement and Milestone's use and publication of the copied materials.

54. Hansen is also entitled to recover, at its election, either Hansen's actual damages and any additional profits of Milestone to be determined at trial, or statutory damages, pursuant to 17 U.S.C. § 504.

SECOND CAUSE OF ACTION
(Copyright Infringement – Common Law)

55. Hansen realleges all foregoing paragraphs of this Complaint as if fully set forth herein.

56. Hansen owns the Hansen Copyrights.

57. Hansen also owns other copyrights, registered and unregistered, as a result of creating and developing its products and the various creations associated therewith.

58. Milestone's actions constitute unauthorized reproduction of the Hansen Copyrights.

59. As a direct and proximate result of Milestone's copyright infringement, Hansen has suffered, and will continue to suffer, monetary loss to its business, reputation, and goodwill. Hansen is entitled to recover from Milestone, in amounts to be proven at trial, the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by Milestone as a result of Milestone's acts of infringement and Milestone's use and publication of the copied materials.

THIRD CAUSE OF ACTION
(Violation of Defend Trade Secrets Act – 18 U.S.C 1831 *et seq.*)

60. Hansen realleges all foregoing paragraphs of this Complaint as if fully set forth herein.

61. Hansen derives substantial independent value from its trade secrets, including the source code and database models associated with the Hansen Copyrights, which information is not generally known, or readily ascertainable through proper means, by others, who could obtain economic value from its use or disclosure.

62. Hansen has taken reasonable steps to keep its trade secrets, including the source code and database models associated with the Hansen Copyrights, a secret.

63. Hansen's trade secrets, including the source code and database model associated with the Hansen Copyrights, is related to a product or service used in or intended for use in interstate or foreign commerce.

64. Milestone acquired knowledge of Hansen's trade secrets, including the source code and database design associated with the Hansen Copyrights, by improper means. On information and belief, this includes at least receiving them from Hansen customers after

executing confidentiality and non-disclosure agreements that Milestone did not intend to abide by.

65. Milestone, without authorization, copied and used Hansen's trade secrets, including the source code and database models associated with the Hansen Copyrights.

66. As a result of the above-described misappropriation, of Hansen's trade secrets, Hansen has been damaged in an amount to be proven at trial.

67. Hansen is also entitled to an award against Milestone for its attorneys' fees incurred herein.

FOURTH CAUSE OF ACTION
(Misappropriation of Trade Secrets)

68. Hansen realleges all foregoing paragraphs of this Complaint as if fully set forth herein.

69. Milestone received or accessed Hansen's confidential information and trade secrets, and improperly used them without authorization from Hansen.

70. Milestone maintained a duty and obligation under the law and the terms of its agreements with Hansen's customers, to keep Hansen's confidential information and trade secrets confidential and to not disclose or use such information for its own benefit.

71. Milestone breached its duty by copying and using Hansen's confidential information and trade secrets for its own use and benefit.

72. Hansen derives substantial independent value from its trade secrets, including the source code and database model associated with the Hansen Copyrights, which information is not generally known, or readily ascertainable through proper means, by others, who could obtain economic value from its use or disclosure.

73. Hansen has undertaken reasonable efforts under the circumstances to maintain the confidentiality of its trade secrets by, among other things, controlling and limiting the number of persons who had access to such information and requiring users of its trade secrets to enter into non-disclosure agreements.

74. Milestone's misappropriation of trade secrets caused actual damages to Hansen and enabled Milestone to derive unjust economic benefits and enrichment from such misappropriation.

75. As a result of the above-described misappropriation, of Hansen's trade secrets, Hansen has been damaged in an amount to be proven at trial.

76. Hansen is also entitled to an award against Milestone for its attorneys' fees incurred herein.

FIFTH CAUSE OF ACTION

(Breach of Contract)

77. Hansen realleges all foregoing paragraphs of this Complaint as if fully set forth herein.

78. Hansen entered into various Software License Agreements with customers and licensees.

79. The Software License Agreements are valid and enforceable.

80. The Software License Agreements require its customers and licensees to enter into independent non-disclosure agreements with certain authorized third-parties before those third-parties may access Hansen's confidential and proprietary information, including the information associated with the Hansen Copyrights.

81. For example, Hansen entered into a Software License Agreement with ONEOK in 2002. This Software License Agreement provides that "Licensee will not disclose all or any part

of the Source Code for the Licensed Software to any person except Licensee Employees who, before obtaining access to the Source Code, have been informed by Licensee of the non-disclosure obligations imposed on both Licensee and such Licensee Employees under this agreement."

82. This Software License Agreement includes in the definition of "Licensee Employees," "third party consultants and/or contractors engaged by Licensee who have a need to know, and, who, prior to obtaining access to the Licensed Software have executed a nondisclosure agreement with terms no less restrictive than as set forth herein and, for third parties accessing the Source Code of the Licensed Software, which specifies Hansen as a third party beneficiary to the Agreement."

83. ONEOK and Milestone entered into such a nondisclosure agreement on June 1, 2007.

84. On information and belief, Milestone obtained access to Hansen's confidential and proprietary information, including the information and source code associated with the Hansen Copyrights, from ONEOK pursuant to the terms of a strict nondisclosure agreement.

85. On information and belief, Milestone obtained access to Hansen's confidential and proprietary information, including the information and source code associated with the Hansen Copyrights, from others of Hansen's customers or licensees, but also pursuant to the terms of a strict nondisclosure agreement.

86. Hansen is the beneficiary of and entitled to enforce the terms of the nondisclosure agreement entered into on June 1, 2007 by ONEOK and Milestone.

87. On information and belief, Hansen is the beneficiary of and entitled to enforce the terms of other nondisclosure agreements entered into by Hansen licensees and Milestone.

88. By virtue of its relationship with Hansen's customers or licensees and its access to Hansen's confidential and proprietary information, including the information associated with the Hansen Copyrights, Milestone maintained a contractual duty to prevent the disclosure or use of such information.

89. By copying and using Hansen's confidential and proprietary information, including the information, data model and source code associated with the Hansen Copyrights, Milestone breached its contractual duties owed to Hansen as a third-party beneficiary to such contractual duties.

90. By virtue of Milestone's conduct, Hansen has been damaged in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

91. Hansen realleges all foregoing paragraphs of this Complaint as if fully set forth herein.

92. The Software License Agreements are valid and enforceable.

93. The Software License Agreements require its customers and licensees to enter into independent non-disclosure agreements with certain authorized third-parties before those third-parties may access Hansen's confidential and proprietary information, including the information associated with the Hansen Copyrights.

94. Some Software License Agreements expressly provide that Hansen is a third-party beneficiary of any non-disclosure agreement required by the Software License Agreements.

95. The Software License Agreements and the non-disclosure agreements required to be entered into between Hansen's customers and licensees, on the one hand, and Milestone on the other, are subject to the implicit and mutual covenant of good faith and fair dealing.

96. The implied covenant of good faith and fair dealing is inherent in contracts and requires a party to act in good faith toward the parties and beneficiaries to that contract.

97. Milestone obtained access to Hansen's confidential and proprietary information, including the information associated with the Hansen Copyrights, from one or more of Hansen's customers or licensees.

98. By virtue of its relationship with Hansen's customers or licensees and its access to Hansen's confidential and proprietary information, including the information associated with the Hansen Copyrights, Milestone maintained a contractual duty to prevent the disclosure or use of such information.

99. By copying and using Hansen's confidential and proprietary information, including the information associated with the Hansen Copyrights, Milestone breached the implied covenant of good faith and fair dealing.

100. By virtue of Milestone's conduct, Hansen has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment against Defendant based on the above-described causes of action as follows:

A. Entry of judgment holding Milestone liable for (1) infringement of Hansen's copyrights at issue in this litigation, (2) misappropriation of trade secrets, (3) breach of contract, and (4) breach of the implied covenant of good faith and fair dealing;

B. An order preliminarily and permanently enjoining Milestone, its officers, agents, servants, employees, attorneys and affiliate companies, its assigns and successors in interest, and those persons in active concert or participation with it, from (1) continued acts of infringement of the copyrights at issue in this litigation and continued misappropriation of Hansen's trade secrets (2) continued access to software or source code owned by Hansen;

C. An order that all copies made or used in violation of Hansen's copyrights, and all means by which such copies may be reproduced, impounded or destroyed or otherwise reasonably disposed of;

D. An order awarding Hansen statutory damages and damages according to proof resulting from Milestone's infringement of the copyrights at issue in this litigation, misappropriation of Hansen's trade secrets, and breaches of contract, together with prejudgment and post-judgment interest;

E. An order awarding Hansen its costs and attorney fees; and

F. Any and all other legal and equitable relief as may be available under law and which the court may deem proper.

JURY DEMAND

Plaintiff hereby demands a jury for all claims so triable.

DATED this 24th day of August, 2017.

DURHAM JONES & PINEGAR, P.C.

/s/ Gregory M. Bentz

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